



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2011-1126]

RIN 1625-AA87

Security Zones, Seattle's Seafair Fleet Week Moving Vessels,
Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule

SUMMARY: The U.S. Coast Guard is establishing security zones around designated participating vessels that are not protected by the Naval Vessel Protection Zone in Seattle's Seafair Fleet Week, while those vessels are in the Sector Puget Sound Captain of the Port (COTP) Zone. A designated participating vessel is a vessel that is named by the Coast Guard each year prior to the event in a Federal Register notice, as well as the Local Notice to Mariners. These security zones are necessary to help ensure the security of the vessels from sabotage or other subversive acts during Seattle's Seafair Fleet Week Parade of Ships and while moored in the Port of Seattle. The Coast Guard will ensure the security of these vessels by prohibiting any person or vessel from entering or remaining in the security zones unless authorized by the Captain of the Port, Puget Sound or Designated

Representative.

DATES: This rule is effective on August 1, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2011-1126. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ensign Anthony P. LaBoy, Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone 206-217-6323, e-mail SectorPugetSoundWWM@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard published a NPRM, Security Zones, Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA, on February 6, 2012. The Coast Guard received 02 comments submitted via regulations.gov and received 01 request for public meeting. Previously, on July 11, 2011, the Coast Guard published a Temporary Final Rule (TFR), Security Zone; 2011 Seattle Seafair Fleet Week Moving Vessels, Puget Sound, Washington which established identical security zones. No comments were received regarding the implementation or enforcement of the temporary security zones established for the 2011 Seattle's Seafair Fleet Week.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register because the 2012 Seafair Parade of Ships would be over by the time the 30 day period ended, and this security zone must be in place before the commencement of this event in order to ensure the security of the participating military vessels.

B. Basis and Purpose

Seattle's Seafair Fleet Week is an annual event which brings a variety of military vessels to Seattle. During the event, the visiting military vessels are at risk because of their military function, and because they will be transiting in the Parade of Ships in close proximity to spectators, highly populated areas,

and other unscreened vessels. Thousands of visitors are given tours on board these vessels throughout the week while they are moored in downtown areas of Seattle. This increases the necessity to ensure the security of each vessel. This rule is necessary to ensure the security of visiting foreign and domestic military vessels not covered under the Naval Vessel Protection Zone (NVPZ). The size of these security zones is necessary to ensure the security of the visiting vessels and is intended to mirror the NVPZ as defined at 33 CFR 165.2015 and 33 CFR 165.2030. This is because it is important for the on-scene patrol to have a consistent zone size for all participating ships in order to maintain control and minimize confusion. The security zones will help prevent any acts which would harm the vessels and their crew and endanger vessels, property, and persons along the parade route.

C. Discussion of Comments, Changes and the Final Rule

The regulatory text of this final rule is the same as the proposed regulatory text contained in the Notice of Proposed Rulemaking. During the comment period, 2 comments were received. One comment stated that this rule would create a "no protest" zone during Seattle's Seafair Fleet Week. The Coast Guard finds this safety zone does not create a no-protest zone because those wishing to conduct first amendment activities may do so in the large area of water between the 100 yard safety zone extending from Pier 66 (as set out in 33 CFR 165.1330) and the inner 100

yards of this security zone. The Pier 66 security zone extends 100 yards from Pier 66 within a box encompassed by the points 47°36.719' N, 122°21.099' W; 47°36.682' N, 122°21.149' W; 47°36.514' N, 122°20.865' W; and 47°36.552' N, 122°20.814' W. The vessels transiting in the parade of ships, including those protected by the security zones, transit on a track line which is at least 400 yards away from Pier 66. For this security zone, which extends 500 yards around the named vessels, the COTP has granted general permission to enter the outer 400 yards. If a vessel protected by the security zone is transiting past Pier 66 at a distance of 400 yards from Pier 66, then the area between the inner 100 yards of the security zone and the west end of the 100 yard safety zone extending from Pier 66 is approximately 200 yards. Vessels may lawfully remain within these 200 yards without violating either the safety zone or security zone so long as they operate at the minimum speed required to remain course. In this ample space, those conducting first amendment activities may be seen by transiting vessels and spectators on the piers. Additionally, there are other areas where persons and vessels may gather and transmit their message where they can be seen by the spectators. In the preamble of the final rule that established the safety zone in 33 CFR 165.1330 (76 FR 30014), the Coast Guard described these areas, which include the area north and south of Pier 66, and the area in front of the public Pier 63, where spectators also gather. The availability of these areas for

first amendment activities is not affected by the security zone described in this final rule. It is noted that in 2011, identical security zones were created to those that are established by this final rule. In 2011, there were no infractions into the zones and no enforcement action taken.

One comment stated that this rule will create a 500 yard exclusionary zone which is more restrictive than a Naval Vessel Protection Zone (NVPZ). In the comment it was stated that "the newly defined security zone mandates that vessel operator stay 500 yard from identified vessels and that operators must somehow gain permission to enter or remain within 500 yards." The security zones established by this rule prohibit any person or vessel from entering or remaining within 500 yards of each designated participating vessel during Seattle's Seafair Fleet Week while in the Sector Puget Sound COTP zone. However, the COTP has granted general permission for vessels to enter the outer 400 yards of the security zone, as long as those vessels within the outer 400 yards of the security zone operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules. It is stated in this final rule that the COTP has granted permission to enter the outer 400 yards of the security zone while operating at the minimum speed necessary to maintain course. This sentence is the permission required to enter the outer 400 yards. No further request must be made to enter the outer 400 yards and transit at

the minimum speed required to maintain course.

There was one request for public hearing submitted. The Coast Guard does not intend to hold a public hearing. Sufficient time was given to address concerns and for the public to submit comments during the Notice of Proposed Rulemaking's 90 day comment period. The Coast Guard will publish an annual notice in the Federal Register naming the designated participating vessels at least 03 days before that year's event and will also provide this information in the Local Notice to Mariners.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard bases this finding on the fact that the security zones will be in place for a limited period of time and vessel traffic will be able to transit around

the security zones. Maritime traffic may also request permission to transit through the zones from the COTP, Puget Sound or a Designated Representative.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities; the owners and operators of vessels intending to operate within the waters covered by the security zones for approximately 1 week each year when the zones for that year's Fleet Week are identified and subject to enforcement. The rule will not have a significant economic impact on a substantial number of small entities because the security zones will be in place for a limited period of time and maritime traffic will still be able to transit around the security zones. Maritime traffic may also request permission to transit through the zones from the COTP, Puget Sound or a Designated Representative.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of security zones. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information

that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.1333 to read as follows:

§ 165.1333 Security Zones, Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA.

(a) Location. The following areas are security zones: all navigable waters within 500 yards of each designated participating vessel while each such vessel is in the Sector Puget Sound Captain of the Port (COTP) zone, as defined in 33 CFR 3.65-10, during a time specified in paragraph (e) of this section. The Coast Guard will publish a notice in the Federal Register each year at least 03 days before the start of the Seattle Seafair Fleet Week to identify the designated

participating vessels for that year. The Coast Guard will also provide this information in the Local Notice to Mariners.

(b) Definitions. For purposes of this section -

Designated participating vessel means a military vessel participating in the Seattle Seafair Fleet Week that has been designated by the Sector Puget Sound COTP in accordance with this section.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to implement or enforce this section.

Seattle Seafair Fleet Week means an annual event involving a parade of U.S. Navy, U.S. Coast Guard, and foreign military ships in Seattle's Elliott Bay waterfront and tours of those ships while docked at Port of Seattle facilities.

(c) Regulations. Under 33 CFR Part 165, Subpart D, no person or vessel may enter or remain in the security zones described in paragraph (a) of this section without the permission of the COTP or a designated representative. The COTP has granted general permission for vessels to enter the outer 400 yards of the security zones as long as those vessels within the outer 400 yards of the security zones operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules. The COTP may be assisted by other federal, state or local agencies with the enforcement of the security zones.

(d) Authorization. All vessel operators who desire to enter the inner 100 yards of the security zones or transit the outer 400 yards at greater than minimum speed necessary to maintain course must obtain permission from the COTP or a Designated Representative by contacting the on-scene Coast Guard patrol craft on VHF 13 or Ch 16. Requests must include the reason why movement within this area is necessary. Vessel operators granted permission to enter the security zones will be escorted by the on-scene Coast Guard patrol craft until they are outside of the security zones.

(e) Annual enforcement period. The security zones described in paragraph (a) of this section will be enforced during Seattle Seafair Fleet Week each year for a period of up to one week. The Seattle Seafair Fleet Week will occur sometime between July 25 and August 14. The annual federal register notice identifying the designated participating vessels will also identify the specific dates of the event for that year.

DATED: June 15, 2012

S. J. FERGUSON
Captain, U. S. Coast Guard
Captain of the Port, Puget Sound

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